

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KENT A. TINGSTAD,

WCCC Case No. 17-002768-NO

Plaintiff,

Case No. 17 - 11167

v.

Hon.

GARDEN CITY POLICE OFFICER
TOM PELACCIO and
GARDEN CITY POLICE OFFICER
SHAWN ADAMS,
Jointly and Severally,

Defendants.

MICHAEL S. CAFFERTY (P36613)
Attorney for Plaintiff
333 West Fort Street, Ste. 1400
Detroit, MI 48226
(313) 964-3070
mcaffe@aol.com

JOHNSON, ROSATI, SCHULTZ
& JOPPICH, P.C.
By: MICHAEL E. ROSATI (P34236)
Attorney for Defendants
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550
(248) 489-4100/FAX (248) 489-1726
mrosati@jrsjlaw.com

NOTICE OF REMOVAL OF ACTION

Defendants, GARDEN CITY POLICE OFFICER TOM PELACCIO and
GARDEN CITY POLICE OFFICER SHAWN ADAMS, through their attorneys,
JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C., by Michael E. Rosati, state
the following in support of this Notice of Removal of action:

1. Defendants were served with a copy of the attached Summons and Complaint on or about March 27, 2017, and this Notice is filed with this Court within (30) days after service on these Defendants of the summons and Complaint in the above-entitled action.. (Ex. 1).

2. Plaintiff's Complaint, filed in the Wayne County Circuit Court, alleges an action under 42 USC § 1983 and 1985, and further claims a violation of Plaintiff's constitutional rights under the Fourth Amendment to the United States Constitution.

3. Plaintiff's allegations, involving claims arising under the constitution and laws of the United States, are within the original jurisdiction of this United States District Court.

4. Pursuant to 28 USC § 1331 and 28 USC § 1441, Defendants have a right to remove this case to federal court, and removal of this action from the Circuit Court for the County of Wayne of the State of Michigan to the United States District Court is proper.

5. All Defendants are being represented by the undersigned counsel and concur in the filing of this Petition.

6. Promptly after the filing of this Notice of Removal, Defendants shall provide written notice to Plaintiff and the clerk of the Wayne County Circuit Court as required by 28 USC §1446.

Defendants, GARDEN CITY POLICE OFFICER TOM PELACCIO and GARDEN CITY POLICE OFFICER SHAWN ADAMS, request that this Honorable Court grant this Notice for Removal of Action.

JOHNSON, ROSATI, SCHULTZ
& JOPPICH, P.C.

s/MICHAEL E. ROSATI
Attorneys for Defendants
27555 Executive Drive, Suite 250
Farmington Hills, Michigan 48331-3550
mrosati@jrsjlaw.com
(248) 489-4100
(P 34236)

Dated: April 13, 2017

BRIEF IN SUPPORT OF NOTICE OF REMOVAL OF ACTION

Defendants, GARDEN CITY POLICE OFFICER TOM PELACCIO and GARDEN CITY POLICE OFFICER SHAWN ADAMS, through their attorneys, JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C., by Michael E. Rosati, rely upon 28 U.S.C. §1331, §1441 and §1446 in support of this Notice of Removal of Action.

JOHNSON, ROSATI, SCHULTZ
& JOPPICH, P.C.

s/MICHAEL E. ROSATI
Attorney for Defendants
27555 Executive Drive, Suite 250
Farmington Hills, Michigan 48331-3550
mrosati@jrsjlaw.com
(248) 489-4100
(P 34236)

Dated: April 13, 2017

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2017, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such electronic filing to all counsel of record registered electronically.

s/ SHANN P. SPENCE

EXHIBIT 1

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
WAYNE COUNTY

SUMMONS AND COMPLAINT

CASE NO.
17-002768-NO
Hon. Lita Masini Popke

2 Woodward Ave., Detroit MI 48226

Court Telephone No. 313-224-2953

Plaintiff

TINGSTAD, KENT A.

Defendant

PELACCIO, TOM

Plaintiff's Attorney

Michael S. Cafferty, P-36613
333 W Fort St Ste 1400
Detroit, MI 48226-3149

Defendant's Attorney

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party or **take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). (MCR 2.111[C])
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued
2/10/2017This summons expires
5/12/2017Court clerk
File & Serve Tyler

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

COMPLAINT *Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.*☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.**Family Division Cases**☐ There is no other pending or resolved action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties.☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.

Judge

Bar no.

General Civil Cases☐ There is no other pending or resolved civil action arise out of the same transaction or occurrence as alleged in the complaint.☐ An civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.

Judge

Bar no.

VENUE

Plaintiff(s) residence (include city, township, or village)

Defendant(s) residence (include city, township, or village)

Place where action arose or business conducted

Date

Signature of attorney/plaintiff



If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

CASE NO.
17-002768-NO

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

☐ **AFFIDAVIT OF PROCESS SERVER**

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

List all documents served with the Summons and Complaint

- on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare that the statements above are true to the best of me information, knowledge and belief.

Service fee	Miles traveled	Mileage fee	Total fee
\$	\$	\$	\$

Signature _____

Name (type or print)

Title

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with

Attachments

on _____
Day, date, time

on behalf of .

Signature

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
WAYNE COUNTY

SUMMONS AND COMPLAINT

CASE NO.
17-002768-NO
Hon. Lita Masini Popke

2 Woodward Ave., Detroit MI 48226

Court Telephone No. 313-224-2953

Plaintiff

TINGSTAD, KENT A.

Plaintiff's Attorney

Michael S. Cafferty, P-36613
333 W Fort St Ste 1400
Detroit, MI 48226-3149

Defendant

ADAMS, SHAWN

Defendant's Attorney

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). (MCR 2.111[C])
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued
2/10/2017This summons expires
5/12/2017Court clerk
File & Serve Tyler

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

COMPLAINT *Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.*☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.**Family Division Cases**☐ There is no other pending or resolved action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties.☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.

Judge

Bar no.

General Civil Cases☐ There is no other pending or resolved civil action arise out of the same transaction or occurrence as alleged in the complaint.☐ An civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.

Judge

Bar no.

VENUE

Plaintiff(s) residence (include city, township, or village)

Defendant(s) residence (include city, township, or village)

Place where action arose or business conducted

Date

Signature of attorney/plaintiff



If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
WAYNE COUNTY

PROOF OF SERVICE

CASE NO.
17-002768-NO

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

☐ OFFICER CERTIFICATE

OR

☐ AFFIDAVIT OF PROCESS SERVER

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

☐ I served personally a copy of the summons and complaint,

☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with

List all documents served with the Summons and Complaint:

on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare that the statements above are true to the best of me information, knowledge and belief.

Service fee	Miles traveled	Mileage fee	Total fee
\$	\$	\$	\$

Signature

Name (type or print)

Title

Subscribed and sworn to before me on _____, _____ County, Michigan.

Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with

Attachments

on

Day, date, time

on behalf of

Signature

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

KENT A. TINGSTAD,

Plaintiff,

vs.

Case No. 2017

NO

GARDEN CITY POLICE OFFICER
TOM PELACCIO and
GARDEN CITY POLICE OFFICER
SHAWN ADAMS,
Jointly & Severally,

Defendants.

17-002768-NO
FILED IN MY OFFICE
WAYNE COUNTY CLERK
2/10/2017 11:05:59 AM
CATHY M. GARRETT

MICHAEL S. CAFFERTY P36613
Attorney for Plaintiff
333 West Fort Street, Ste 1400
Detroit, MI 48226
(313) 964-3070
mcaffe@aol.com

COMPLAINT

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the Complaint.

/s/Michael S. Cafferty

Now comes Plaintiff, through counsel, and for his Complaint states as follows:

1. That Plaintiff, KENT A. TINGSTAD, is a resident of the County of Wayne,
State of Michigan.
2. That Defendants, GARDEN CITY POLICE OFFICER TOM PELACCIO and

RECEIVED

MAR 31 2017

MMRMA
Claims Dept.

GARDEN CITY POLICE OFFICER SHAWN ADAMS (hereinafter collectively referred to as "Defendants") are, upon information and belief, residents of the County of Wayne, State of Michigan.

3. That the acts or omissions giving rise to this case occurred within the County of Wayne, State of Michigan, thus making venue proper in this Court pursuant to the Revised Judicature Act, as amended.

4. That the amount in controversy in this action exceeds this Court's jurisdictional requirement of \$25,000.00, exclusive of costs, interest and attorney fees, as set forth in the Revised Judicature Act, as amended.

BACKGROUND FACTS

5. That the Plaintiff was a resident on or about March 10, 2014 by the Defendant police officers.

6. That the offense for which the Plaintiff was arrested involved operating a motor vehicle while intoxicated.

7. That after being stopped by the Defendants, the Plaintiff exited his vehicle.

8. That after exiting his vehicle, the Plaintiff was subjected to field sobriety tests by the Defendants.

9. That the Plaintiff complied with the request to perform field sobriety tests.

10. That after conducting field sobriety tests, the Defendants made the decision to arrest the Plaintiff.

11. That in the course of arresting the Plaintiff, the Defendants used physical force.

12. That the amount of physical force used by the Defendants was clearly in

excess of that degree of force, which was required under the circumstances.

13. That the Defendants, through the excessive use of force, caused injuries to the Plaintiff's face, lips, head, arms, back and other parts of Plaintiff's body.

14. That the force used by the Defendants included, but was not limited to unnecessarily slamming the Plaintiff on the ground/pavement and unnecessarily slamming the Plaintiff onto the hood of a vehicle.

15. That the Defendants also intentionally handcuffed the Plaintiff in such a manner as to cause pain and injury to the Plaintiff's wrists.

COUNT I – VIOLATION OF 42 U.S.C. § 1983 – EXCESSIVE FORCE

16. Plaintiff incorporates by reference as though fully set forth herein each of the foregoing paragraphs of this Complaint.

17. That at all pertinent times the Defendants were acting under color of law as duly authorized police officers or officials.

18. That while acting under color of state law, the Defendants violated the Plaintiff's clearly established constitutional rights, including, but not limited to Plaintiff's rights guaranteed by the 4th, 5th and 14th Amendments to the United States Constitution, including the right to be free from the use of excessive force during arrests.

19. That the Defendants violated Plaintiff's 4th Amendment rights by engaging in an unreasonable search and/or seizure of the Plaintiff, including using grossly unnecessary and excessive force in carrying out the arrest of the Plaintiff and, thereafter, intentionally harming the Plaintiff via intentionally tightening the handcuffs on the Plaintiff in such a manner as to cause the Plaintiff pain and injury.

20. That the Defendants' actions vis-à-vis the Plaintiff were undertaken with at

least a reckless disregard for the Plaintiff's federally protected rights, including the Plaintiff's right to be free from the use of excessive force.

21. That as a direct and proximate result of the Defendants' violation of the Plaintiff's constitutional rights, including his 4th Amendment rights against unreasonable searches and seizures, the Plaintiff has suffered and will continue to suffer damages, including, but not limited to physical injuries, pain and suffering, shock, humiliation, mortification and other damages.

22. That in addition to compensatory damages, Plaintiff is entitled to an award of punitive damages as a result of the Defendant's intentional and/or reckless disregard of the Plaintiff's federally protected rights.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter a judgment in his favor against the Defendants, jointly and severally, in whatever amount this Court finds to constitute full, fair and just compensation, together with a separate award of punitive damages, in addition to costs, interest and attorney fees where permitted by law, including 42 U.S.C. § 1988.

COUNT II – VIOLATION OF 42 U.S.C. § 1985

23. Plaintiff incorporates by reference as though fully set forth herein each of the foregoing paragraphs of this Complaint.

24. That upon information and belief, the Defendants consorted and conspired amongst themselves to deprive Plaintiff of his federally protected rights, including his right protected by the 4th, 5th and 14th Amendments to the United States Constitution.

25. That upon information and belief, the Defendants were, at all relevant times,

acting in concert with one another and pursuant to a common plan or scheme to deprive the Plaintiff of his federally protected rights.

26. That the Defendants' conduct is actionable under 42 U.S.C. § 1985, which protects individuals from conspiracies to violate their civil rights.

27. That as a direct and proximate result of the Defendants' conspiracy to violate Plaintiff's civil rights, the Plaintiff has and will continue to suffer damages as previously alleged.

28. That the Defendants' conduct in conspiring to violate the Plaintiff's civil rights was undertaken with an intentional or reckless disregard of the Plaintiff's federally protected rights, thus entitling Plaintiff to a separate award of punitive damages.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter a judgment in his favor against the Defendants, jointly and severally, in whatever amount this Court finds to constitute full, fair and just compensation, together with a separate award of punitive damages, in addition to costs, interest and attorney fees where permitted by law, including 42 U.S.C. § 1988.

Respectfully submitted,

/s/Michael S. Cafferty
MICHAEL S. CAFFERTY
P36613
Attorney for Plaintiff
333 West Fort St Ste 1400
Detroit, MI 48226
mcaffe@aol.com

DATED: February 10, 2017